HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

MONDAY ,THE TWENTY FOURTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

C.M.A.Nos. 337 AND 338 OF 2022

COMMON C.T. IN BOTH C.M.A's :
Between:

1. Smt. Sharda Tiwari, (Died per LR's 3 to 6).
2. Shiv Shanker Tiwari @ Alok, S/o. Late Pandit Bala Prasad Ji Tiwari Aged about. 42 years, Occ. Astrology consultant, R/o. Municipal No.30-85/3A (Old) and 1-30-741 (New), Kaushalya Bhawan, constructed on Plot Nos. 221 @ 222, Shiva Nagar Colony, Kanajiguda, Alwal Revenue Village and Mandal, Trimulgherry, Malkajgiri Revenue Division

...APPELLANTS/RESPONDENTS 1&2

3. Smt Sangeeta Tiwari @ Sangeeta Pandey @ Padain D/o Late Smt Sharda Tiwari @ Pandit Bala Prasad Ji Tiwari R/o H.No.8-30/L/12 "Sonia Residency", Road No.4, New Hema Nagar Colony, Nacharam Revenue Village, Uppal Revenue Mandal, Malkajgiri Revenue Division, Medchal-Malkajgiri District
4. Smt Kavita Tiwari @ Kavita Hazari D/o Late SmtSharda Tiwari @ Late Pandit Bala Prasad Ji Tiwari R/o H.No.2-110 "Hazari Bhawan", Burgula Revenue Village, Via Shad Nagar, Farooq Nagar Revenue Mandal, Shad Nagar, Revenue Division, Ranga Reddy District
5. Smt Sushma Tiwari @ Sushma Gaur D/o Late Smt Sharda Tiwari @ Late Pandit Bala Prasad Ji Tiwari R/o Municipal No.25-1/4, Plot No.4, Shree Hari Kunj, Gollaguda, Subhash Nagar, Venkatapuram Revenue Village, Alwal Revenue Mandal, Malkajgiri Revenue Division, Medchal Malkajgiri District
6. Smt.SandhyaTiwari @ Sandhya D/o Late Smt Sharda Tiwari & Late Pandit Bala Prasad Ji Tiwari R/o R/o H.No.8-30/L/12 "Sonia Residency", Road No.4, New Hema Nagar Colony, Nacharam Revenue Village, Uppal Revenue Mandal, Malkajgiri Revenue Division, Medchal-Malkajgiri District.

(Appellants 3 to 6 are brought on record as LR's of deceased A1 vide Court Order dated 24.04.2023 in I.A.No.3 of 2023 in CMA.No. 337 of 2022 and CMA No. 338 of 2022)

...PROPOSED LRS/APPELLANTS 3 TO 6

AND

1. Pandit Ashok Kumar Tiwari, S/o. Late Pandit Bala Prasad Ji Tiwari, Aged about. 50 years, Occ. Legal Practitioner, Presently residing at 2-4-48, (New) 42, (old), Bal Ganesh Khand, Tiwari Sadan, Ground Floor Portion, Entire first and second floor, Mahatma Gandhi Road, Ramgopalpet, Secunderabad – 500003

...RESPONDENT/PETITIONER/PLAINTIFF

2. The Revenue Divisional Officer cum Maintenance Tribunal, Secunderabad Division, Hyderabad District, Having office at Opp. Post Graduate College, Sardar Patel Road, Secunderabad - 500003.

3. The Assistant Director, Disabled and Senior Citizens Welfare, Hyderabad District cum Committee Member, Having office at Manoranjan Complex, Gr. Floor, Near Ajanta Gate, M.J. Road, Hdyerabad - 500001
4. The Help Age India, Committee Member for Disabled and Senior Citizen, Having office at 2-2-3/A/A5, Premasai Bhuvanam Apartment, Besides Advanced Training Institute, Shivam Road, Hyderabad - 500004.
5. Smt. Narender Kakkar, wife of Late Sri. Vishnu Kakkar, Hindu, aged 67 years, Committee Member for Disabled and Senior Citizen, Hyderabad District, having office at Flat No.404 and 405, Sai Kiran Apartment, Block No.2, Sri Nagar Colony, Hyderabad-500 073, Telangana State
6. The Sub-Registrar, Vallabh Nagar, erstwhile Ranga Reddy District, now Medchal-Malkajgiri District, having office at 1-8-505/10, Prakash Nagar Road, Prakash Nagar, Begumpet, Hyderabad-500 016, Telangana State.
7. The Sub-Registrar, Bala Nagar, erstwhile Ranga Reddy District, now Medchal-Malkajgiri District, having office at Plot No.5, Opp. I.D.P.L Road, Bala Nagar, Hyderabad - 500 037, Telangana State.
8. The District Registrar, erstwhile Ranga Reddy District, now Medchal Malkajgiri District, having office at Medchal- 501 401, Telangana State
9. The Greater Hyderabad Municipal Corporation, represented by its Deputy Commissioner, Circle-16, Alwal (North Z having office at Municipal Complex, Temple Alwal Road, Alwal, Secunderabad-500010, Telangana State.
10. The Greater Hyderabad Municipal Corporation, represented by its Zonal Commissioner, (North Zone), having office at Municipal Complex, West Marredpally Main Road, Ashwini Colony, Beside City Civil Court Complex, via Sardar Patel Road, Secunderabad-500 026, Telangana State.
11. The Southern Power Distribution Company of Telangana Limited, (T.S.S.P.D.C.L., (A Govt. of Telangana Ltd.,) represented by its Divisional Engineer, (Operations), North Circle, Bowenpally Division, having office at Bowenpally, Secunderabad-500 011, Telangana State.
12. The Hyderabad Metropolitan Water Works and Sewerage Board, represented by its General Manager (Engg.), Operation and Maintenance, Division No.13, Circle No. V, (Alwal and Malkajgiri), having office at Neredmet Sanikpuri, Dr. A. S. Rao Nagar Cross Road, Cyberabad-500 094, Telangana State
13. The Asst. Pension Payment Officer, Secunderabad, having office at Hari Hara Kala Bhawan, Sardar Patel Road, Secundera-500 003, Telangana State.

...RESPONDENTS/RESPONDENTS/DEFENDANTS

C.M.A.No.337 of 2022 :

Appeal under Order 43 Rule 1 of C.P.C against the Order and decree made in I.A.No.1205 of 2018 in O.S.No.333 of 2018 dated 10.03.2022 on the file of the Court of the XVI Additional District & Sessions Judge, at Malkajgiri.

C.M.A.No.338 of 2022 :

Appeal under Order 43 Rule 1 of C.P.C against the Order and decree made in I.A.No.1204 of 2018 in O.S.No.333 of 2018 dated 10.03.2022 on the file of the Court of the XVI Additional District & Sessions Judge, at Malkajgiri.

IA NO: 2 OF 2022 in C.M.A.No.337 of 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of decree and order dt.10.03.2022 passed in I.A.No.1205 of 2018 in O.S.No.333 of 2018 on the file of the Principal District Judge, Medchal Malkajgiri District at Malkajgiri. pending disposal of main appeal and to pass

IA NO: 3 OF 2022 in C.M.A.No.337 of 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S.No.333 of 2018 on the file of the Principal District Judge, Medchal Malkajgiri District at Malkajgiri.

I.A NO: 1 OF 2023 in C.M.A.No.337 of 2022

Petition under Section 5 of Limitation Act praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of (2) days in filing an application to set aside the abatement caused.

COMMON C.T. IN I.A.No.2&3 of 2023 in C.M.A.No.337 of 2022

Between

1. Smt. Sharda Tiwari, (Died per LRs)
2. Shiv Shanker Tiwari @ Alok, S/o. Late Pandit Bala Prasad Ji Tiwari Aged about. 42 years, Occ. Astrology consultant, R/o. Municipal No.30-85/3A (Old) and 1-30-741 (New), Kaushalya Bhawan, constructed on Plot Nos. 221 @ 222, Shiva Nagar Colony, Kanajiguda, Alwal Revenue Village and Mandal, Trimulgherry, Malkajgiri Revenue Division

...APPELLANTS/PETITIONER/DEFENDANT

AND

1. Pandit Ashok Kumar Tiwari, S/o. Late Pandit Bala Prasad Ji Tiwari, Aged about. 50 years, Occ. Legal Practitioner, Presently residing at 2-4-48, (New) 42, (old), Bal Ganesh Khand, Tiwari Sadan, Ground Floor Portion, Entire first and second floor, Mahatma Gandhi Road, Ramgopalpet, Secunderabad – 500003

...RESPONDENT/PETITIONER/PLAINTIFF

2. The Revenue Divisional Officer cum Maintenance Tribunal, Secunderabad Division, Hyderabad District, Having office at Opp. Post Graduate College, Sardar Patel Road, Secunderabad - 500003.
3. The Assistant Director, Disabled and Senior Citizens Welfare, Hyderabad District cum Committee Member, Having office at Manoranjan Complex, Gr. Floor, Near Ajanta Gate, M.J. Road, Hdyerabad - 500001
4. The Help Age India, Committee Member for Disabled and Senior Citizen, Having office at 2-2-3/A/A5, Premasai Bhuvanam Apartment, Besides Advanced Training Institute, Shivam Road, Hyderabad - 500004.

Pending M.Ps in C.M.A.Nos.338 of 2022

IA NO: 2 OF 2022 in C.M.A.No.338 of 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of decree and order dt.10.03.2022 passed in I.A.No.1204 of 2018 in O.S.No.333 of 2018 on the file of the Principal District Judge, Medchal Malkajgiri District at Malkajgiri.

IA NO: 3 OF 2022 in C.M.A.No.338 of 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S.No.333 of 2018 on the file of the Principal District Judge, Medchal Malkajgiri District at Malkajgiri.

I.A NO: 1 OF 2023 in C.M.A.No.338 of 2022

Petition under Section 5 of Limitation Act praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of (2) days in filing an application to set aside the abatement caused.

COMMON C.T. IN I.A.No.2&3 of 2023 in C.M.A.No.338 of 2022

Between

1. Smt. Sharda Tiwari, (Died per LRs)
2. Shiv Shanker Tiwari @ Alok, S/o. Late Pandit Bala Prasad Ji Tiwari Aged about. 42 years, Occ. Astrology consultant, R/o. Municipal No.30-85/3A (Old) and 1-30-741 (New), Kaushalya Bhawan, constructed on Plot Nos. 221 @ 222, Shiva Nagar Colony, Kanajiguda, Alwal Revenue Village and Mandal, Trimulgherry, Malkajgiri Revenue Division

...APPELLANTS/PETITIONER/DEFENDANT

AND

1. Pandit Ashok Kumar Tiwari, S/o. Late Pandit Bala Prasad Ji Tiwari, Aged about. 50 years, Occ. Legal Practitioner, Presently residing at 2-4-48, (New) 42, (old), Bal Ganesh Khand, Tiwari Sadan, Ground Floor Portion, Entire first and second floor, Mahatma Gandhi Road, Ramgopalpet, Secunderabad – 500003

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2. The Revenue Divisional Officer cum Maintenance Tribunal, Secunderabad Division, Hyderabad District, Having office at Opp. Post Graduate College, Sardar Patel Road, Secunderabad - 500003.
3. The Assistant Director, Disabled and Senior Citizens Welfare, Hyderabad District cum Committee Member, Having office at Manoranjan Complex, Gr. Floor, Near Ajanta Gate, M.J. Road, Hdyerabad - 500001

5. Smt. Narender Kakkar, wife of Late Sri. Vishnu Kakkar, Hindu, aged 67 years, Committee Member for Disabled and Senior Citizen, Hyderabad District, having office at Flat No.404 and 405, Sai Kiran Apartment, Block No.2, Sri Nagar Colony, Hyderabad-500 073, Telangana State
6. The Sub-Registrar, Vallabh Nagar, erstwhile Ranga Reddy District, now Medchal-Malkajgiri District, having office at 1-8-505/10, Prakash Nagar Road, Prakash Nagar, Begumpet, Hyderabad-500 016, Telangana State.
7. The Sub-Registrar, Bala Nagar, erstwhile Ranga Reddy District, now Medchal-Malkajgiri District, having office at Plot No.5, Opp. I.D.P.L Road, Bala Nagar, Hyderabad - 500 037, Telangana State.
8. The District Registrar, erstwhile Ranga Reddy District, now Medchal Malkajgiri District, having office at Medchal- 501 401, Telangana State
9. The Greater Hyderabad Municipal Corporation, represented by its Deputy Commissioner, Circle-16, Alwal (North Z having office at Municipal Complex, Temple Alwal Road, Alwal, Secunderabad-500010, Telangana State.
10. The Greater Hyderabad Municipal Corporation, represented by its Zonal Commissioner, (North Zone), having office at Municipal Complex, West Marredpally Main Road, Ashwini Colony, Beside City Civil Court Complex, via. Sardar Patel Road, Secunderabad-500 026, Telangana State.
11. The Southern Power Distribution Company of Telangana Limited, (T.S.S.P.D.C.L., (A Govt. of Telangana Ltd.,) represented by its Divisional Engineer, (Operations), North Circle, Bowenpally Division, having office at Bowenpally, Secunderabad-500 011, Telangana State.
12. The Hyderabad Metropolitan Water Works and Sewerage Board, represented by its General Manager (Engg.), Operation and Maintenance, Division No.13, Circle No. V, (Alwal and Malkajgiri), having office at Neredmet Sanikpuri, Dr. A. S. Rao Nagar Cross Road, Cyberabad-500 094, Telangana State
13. The Asst. Pension Payment Officer, Secunderabad, having office at Hari Hara Kala Bhawan, Sardar Patel Road, Secundera-500 003, Telangana State

...RESPONDENTS/RESPONDENTS/DEFENDANTS

14. Smt Sangeeta Tiwari @ Sangeeta Pandey @ Padain D/o Late Smt Sharda Tiwari @ Pandit Bala Prasad Ji Tiwari R/o H.No.8-30/L/12 "Sonia Residency", Road No.4, New Hema Nagar Colony, Nacharam Revenue Village, Uppal Revenue Mandal, Malkajgiri Revenue Division, Medchal-Malkajgiri District
15. Smt Kavita Tiwari @ Kavita Hazari D/o Late SmtSharda Tiwari @ Late Pandit Bala Prasad Ji Tiwari R/o H.No.2-110 "Hazari Bhawan", Burgula Revenue Village, Via Shad Nagar, Farooq Nagar Revenue Mandal, Shad Nagar, Revenue Division, Ranga Reddy District
16. Smt Sushma Tiwari @ Sushma Gaur D/o Late Smt Sharda Tiwari @ Late Pandit Bala Prasad Ji Tiwari R/o Municipal No.25-1/4, Plot No.4, Shree Hari Kunj, Gollaguda, Subhash Nagar, Venkatapuram Revenue Village, Alwal Revenue Mandal, Malkajgiri Revenue Division, Medchal Malkajgiri District
17. Smt.SandhyaTiwari @ Sandhya D/o Late Smt Sharda Tiwari & Late Pandit Bala Prasad Ji Tiwari R/o R/o H.No.8-30/L/12 "Sonia Residency", Road No.4, New Hema Nagar Colony, Nacharam Revenue Village, Uppal Revenue Mandal, Malkajgiri Revenue Division, Medchal-Malkajgiri District.

(Respondent Nos. 14 to 17 are brought on record as LR's of deceased A1 vide Court Order dated 24.04.2023 in I.A.No.3 of 2023 in CMA.No. 337 of 2022 and CMA No. 338 of 2022)

...PROPOSED LRS/RESPONDENTS 14 TO 17

IA NO: 2 OF 2023 in C.M.A.No.337 of 2022

Petition under Order XXII Rule 9 R/w Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to set aside the abatement caused to bring the Legal Heirs of Late Smt. Sharda Tiwari as Respondents No.14 to 17.

IA NO: 3 OF 2023 in C.M.A.No.337 of 2022

Petition under XXII Rule 4(1) R/w Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to bring the respondents No.14 to 17 as legal heirs of Appellant No.1 late Smt. Sharda Tiwari, in CMA No.337 of 2022 as well as in the IAs.

4. The Help Age India, Committee Member for Disabled and Senior Citizen, Having office at 2-2-3/A/A5, Premasai Bhuvanam Apartment. Besides Advanced Training Institute, Shivam Road, Hyderabad - 500004.
5. Smt. Narender Kakkar, wife of Late Sri, Vishnu Kakkar, Hindu, aged 67 years, Committee Member for Disabled and Senior Citizen, Hyderabad District, having office at Flat No.404 and 405, Sai Kiran Apartment, Block No.2, Sri Nagar Colony, Hyderabad-500 073, Telangana State
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7. The Sub-Registrar, Bala Nagar, erstwhile Ranga Reddy District, now Medchal-Malkajgiri District, having office at Plot No.5, Opp. I.D.P.L Road, Bala Nagar, Hyderabad - 500 037, Telangana State.
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9. The Greater Hyderabad Municipal Corporation, represented by its Deputy Commissioner, Circle-16, Alwal (North Z having office at Municipal Complex. Temple Alwal Road, Alwal, Secunderabad-500010, Telangana State.
10. The Greater Hyderabad Municipal Corporation, represented by its Zonal Commissioner, (North Zone), having office at Municipal Complex, West Marredpally Main Road, Ashwini Colony, Beside City Civil Court Complex, via Sardar Patel Road, Secunderabad-500 026, Telangana State.
11. The Southern Power Distribution Company of Telangana Limited, (T.S.S.P.D.C.L., (A Govt. of Telangana Ltd.,) represented by its Divisional Engineer, (Operations), North Circle, Bowenpally Division, having office at Bowenpally, Secunderabad-500 011, Telangana State.
12. The Hyderabad Metropolitan Water Works and Sewerage Board, represented by its General Manager (Engg.), Operation and Maintenance, Division No.13, Circle No. V, (Alwal and Malkajgiri), having office at Neredmet Sanikpuri, Dr. A. S. Rao Nagar Cross Road, Cyberabad-500 094, Telangana State
13. The Asst. Pension Payment Officer, Secunderabad, having office at Hari Hara Kala Bhawan, Sardar Patel Road, Secundera-500 003, Telangana State

...RESPONDENTS/RESPONDENTS/DEFENDANTS

14. Smt Sangeeta Tiwari @ Sangeeta Pandey @ Padain D/o Late Smt Sharda Tiwari @ Pandit Bala Prasad Ji Tiwari R/o H.No.8-30/L/12 "Sonia Residency", Road No.4, New Hema Nagar Colony, Nacharam Revenue Village, Uppal Revenue Mandal, Malkajgiri Revenue Division, Medchal-Malkajgiri District
15. Smt Kavita Tiwari @ Kavita Hazari D/o Late SmtSharda Tiwari @ Late Pandit Bala Prasad Ji Tiwari R/o H.No.2-110 "Hazari Bhawan", Burgula Revenue Village, Via Shad Nagar, Farooq Nagar Revenue Mandal, Shad Nagar, Revenue Division, Ranga Reddy District
16. Smt Sushma Tiwari @ Sushma Gaur D/o Late Smt Sharda Tiwari @ Late Pandit Bala Prasad Ji Tiwari R/o Municipal No.25-1/4, Plot No.4, Shree Hari Kunj, Gollaguda, Subhash Nagar, Venkatapuram Revenue Village, Alwal Revenue Mandal, Malkajgiri Revenue Division, Medchal Malkajgiri District
17. Smt.SandhyaTiwari @ Sandhya D/o Late Smt Sharda Tiwari & Late Pandit Bala Prasad Ji Tiwari R/o R/o H.No.8-30/L/12 "Sonia Residency", Road No.4, New Hema Nagar Colony, Nacharam Revenue Village, Uppal Revenue Mandal, Malkajgiri Revenue Division, Medchal-Malkajgiri District.

(Respondent Nos. 14 to 17 are brought on record as LR's of deceased A1 vide Court Order dated 24.04.2023 in I.A.No.3 of 2023 in CMA.No. 337 of 2022 and CMA No. 338 of 2022)

...PROPOSED LRS/RESPONDENTS 14 TO 17

IA NO: 2 OF 2023 in C.M.A.No.338 of 2022

Petition under Order XXII Rule 9 R/w Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to set aside the abatement caused to bring the Legal Heirs of Late Smt. Sharda Tiwari as Respondents No.14 to 17.

IA NO: 3 OF 2023 in C.M.A.No.338 of 2022

Petition under XXII Rule 4(1) R/w Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to bring the respondents No.14 to 17 as legal heirs of Appellant No.1 late Smt. Sharda Tiwari, in CMA No.337 of 2022 as well as in the IAs.

Counsel for the Appellants (in both C.M.As) : SRI. AKKAM ESHWAR

Counsel for the Respondent No.1
(in both C.M.As) : SRI K. SARVA BHOUMA RAO

The Court made the following: COMMON JUDGMENT

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CIVIL MISCELLANEOUS APPEAL Nos.337 OF 2022 AND 338 OF 2022

COMMON JUDGMENT :

The appellants/respondents/defendants 1 and 2 have filed these two Civil Miscellaneous Appeals under Order 43 Rule 1 C.P.C., assailing the Orders, dated 10.03.2022 in two interlocutory applications vide I.A.No.1204 of 2018 and 1205 of 2018 in O.S.No.333 of 2018 on the file of XVI Additional District and Sessions Judge, Rangareddy. The respondent/petitioner/plaintiff filed the above stated interlocutory applications before the learned XVI Additional District Judge (hereinafter be referred as trial Court) under Order 39 Rule 1 and 2 r/w Section 151 C.P.C. for two separate relief namely temporary injunction to restrain the appellants herein (shown as respondents 1 and 2 in the interlocutory applications) from changing the physical features of the suit schedule property and also to restrain them from

alienating/transferring suit "A" schedule property in favour of 3rd parties pending disposal of the main suit. The trial Court having considered the affidavit filed in support of the petition, and counter affidavit of the respondents i.e., appellants herein, allowed the interlocutory applications and granted temporary injunction against the appellants herein. Being aggrieved by the said order, the appellants filed two separate miscellaneous appeals, but with the same contentions. The grounds on which the appeals are filed are common. The contention of the respondent/plaintiff is also common in both the appeals. Therefore, a common order would suffice to dispose both the appeals.

2. The brief facts of the case of the parties before the trial Court is quite necessary for disposal of these two appeals. The 1st appellant Smt. Sharada Tiwari is mother of 2nd appellant as well as the respondent. The respondent is the petitioner, filed the above stated interlocutory applications with a specific plea that he is owner of "A"

schedule property by virtue of gift settlement deed vide document No.282 of 2008 executed by the 1st appellant which was attested by the 2nd appellant. The respondent has claimed before the trial Court that subsequent to the execution of gift settlement deed through which he got the schedule property both the appellants herein developed animosity against him. They started harassing the wife of the respondent for additional dowry. Therefore, the wife of respondent lodged a report before police, Ramgopalpet on 22.08.2013. Therefore, the appellants herein started making false affidavits creating false documents, fabricating false evidence to make wrongful gains to themselves and to cause wrongful loss to the respondent. The respondent has further claimed in the affidavit filed before the trial Court that the appellants herein by manipulating the statutory provisions, foisted a false case against him and obtained an order from the Maintenance Tribunal cum-Revenue Divisional Officer, Secunderabad Revenue Division of Hyderabad District vide proceedings

No.B/1795/2014, dated 12.01.2015. The 1st appellant is wife of a retired Government employee, thereby drawing a sum of Rs.15,256/- per month towards family pension through the bank account. The 2nd appellant got himself enrolled as an Advocate by misrepresentation of facts, only to avail welfare fund and incidental benefits, without any intention to pursue the profession.

3. The respondent further claimed before the trial Court that having obtained an order from the Revenue Divisional Officer by making false representation, started attempts to deprive the legitimate rights of the respondent over the schedule property. He has claimed that he has got *prima facie* case, balance of convenience was in his favour. If the appellants herein were allowed, there is a chance of their alienating property to 3rd parties and a chance of appellants changing the physical features of the property, thereby sought for temporary injunction to restrain the appellants herein from changing the nature of the property and also from alienating the property to 3rd parties.

4. The appellants herein opposed both the petitions. The 2nd appellant herein, filed his counter affidavit, disputing the material averments of the case of respondent. As per the counter affidavit filed before the trial Court, the appellants have claimed that the respondent herein made false statement with regard to the ownership on the schedule property. He has claimed right on the property by virtue of a gift settlement deed document No.282 of 2008 which was duly cancelled by the proceedings No.B/1975/2014 passed by "Maintenance Tribunal constituted under Maintenance and Welfare of Parents and Senior Citizens Act, 2007" on the application filed by the 1st appellant herein. Therefore, the gift settlement deed executed by appellant No.1 in favour of the respondent/plaintiff was already cancelled. As such he has no right over the property. They have also claimed that the respondent deliberately suppressed the material facts. The 1st appellant herein after the cancellation of gift settlement deed in favour of respondent, executed another gift

settlement deed vide document No.606 of 2015 in favor of the 2nd appellant and after obtaining statutory permissions, 2nd appellant has constructed a building in the property and both the appellants are staying in the said building since May, 2017. The name of the 2nd appellant has been mutated in the municipal records. Therefore, the question of appellants changing the physical features of the property or creating 3rd party interest does not arise and also claimed that the respondent approached the trial Court with unclean hands. Thereby, he is not entitled to equitable relief of injunction and prayed for dismissal of both the applications.

5. The trial Court having heard both parties, disposed the petitions under two separate orders, dated 10.03.2022.

6. Being aggrieved by the grant of injunction against the appellants, the appellants have filed these two Civil Miscellaneous Appeals on the ground that the trial Court grossly erred in appreciating the facts and circumstances

of the case not in a proper and prospective manner. The impugned orders are unsustainable either in law or on facts. As such, they are liable to be set aside. The trial Court ought to have seen that the gift deed executed in favour of the respondent was already set aside in the proceedings of Maintenance Tribunal. The trial Court ought to have seen that the respondent herein challenged the said proceedings before the High Court in a separate petition vide C.R.P.No.2475 of 2015 which is pending. Therefore, the interlocutory applications filed by the respondent are not maintainable. The appellants have claimed that since the Civil Revision Petition filed by the respondent against the proceedings of Maintenance Tribunal is pending before the High Court, the suit filed by the respondent/plaintiff is not maintainable. There is a bar of jurisdiction of civil Courts as per the provisions of Section 27 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. They have also claimed that the trial Court without giving any reasons, much less the valid

reason, granted interim injunction without any substantial material. Therefore, they sought for setting aside the impugned orders and for setting aside the injunction granted against them.

7. Heard both parties.

8. Learned counsel for the appellants has submitted that the entire case of the respondent is based on the gift settlement deed document No.282 of 2008, but the said gift settlement deed was already cancelled by a competent forum vide proceedings No.B/1795/2014. The 1st appellant herein has already executed another gift settlement deed in favour of the 2nd appellant herein, who in turn obtained necessary and valid permission from the concerned authorities, constructed a building and started residing therein along with his mother. Therefore, the trial Court ought not to have allowed the interlocutory application filed by the respondent who had no title or possession over the

property. Therefore, they sought for setting aside the impugned order.

9. On the other hand, learned counsel for respondent/plaintiff vehemently opposed the contention and submitted that the entire claim of appellants herein is based on the proceedings referred above. But, the said proceedings were passed by a Forum without appropriate authority. Learned counsel has submitted that Maintenance and Welfare of Parents and Senior Citizens Act was brought into force in the erstwhile Andhra Pradesh in view of G.O.Ms.No.10, Women Development, Child Welfare and Disabled Welfare Department, dated 22.04.2008 w.e.f. 28.04.2008. Whereas, the registered Gift Deed vide document No.282/2008 was executed by 1st appellant on 24.01.2008 much prior to the above referred Act coming into force in the erstwhile Andhra Pradesh State. Therefore, the proceedings on which the appellants based their entire claim are of no use as such, the appellants cannot claim any right over the property by

virtue of subsequent gift settlement deed which was executed without any right. The counsel further argued that the respondent obtained the property by virtue of a valid document which in fact, is subsisting. Therefore, the subsequent document executed by appellant No.1 in favour of the 2nd appellant, cannot convey any right over the property to the 2nd appellant. The respondent/plaintiff can prove all his contentions in the main suit which is pending before the trial Court. But, in the meanwhile, if the appellants are allowed to alienate the property or change the nature of property, it would lead to multiplicity of proceedings and result irreparable loss to the respondent. Therefore, sought for dismissal of both the appeals.

10. Now the point for consideration in the appeals are :

1. *Whether the cancellation of the gift deed in favour of the respondent/plaintiff by the 1st appellant is valid ?*
2. *Whether the proceedings on which the appellants based their entire claim vide proceeding No. B/1795/2014 are valid?*

3. *Whether the appellants herein have got any right over the property, thereby the orders passed by the trial Court in the above referred interlocutory applications are liable to be set aside?*

11. **POINTS:**

There is no dispute about the relationship between the parties. The appellant No.2 and respondent are sons of the 1st appellant. It is an admitted fact by both parties that the husband of the 1st appellant and father of the 2nd appellant and respondent/plaintiff is no more. The 1st appellant is receiving family pension in view of the death of her husband, who worked as Government Teacher. It is also an admitted fact that the 1st appellant has executed a gift settlement deed in favour of the respondent herein vide document No.282 of 2008 on 24.01.2008. The respondent has claimed that he has purchased the property covered by the said gift deed, but he obtained the document in favour of his mother out of love and affection and subsequently she has conveyed the property in his favour under a valid

gift settlement deed. As could be seen from the entire record, the 1st appellant herein approached Revenue Divisional Officer-cum-Maintenance Tribunal, Secunderabad Division of Hyderabad District and initiated proceedings for cancellation of the gift document. As could be seen from the documents filed by the appellants, the Revenue Divisional Officer passed order on 12.01.2015 and observed that the respondent/plaintiff could obtain registered gift deed from his mother i.e., appellant No.1 in the appeals by playing fraud. Therefore, having considered the opinion of the Committee which he constituted suggested the appellant No.1 herein to initiate steps for cancellation of the gift deed which she said to have executed under coercion and in view of the alleged fraud of the respondent/plaintiff. Therefore, by virtue of the said order, the appellant No.1 herein cancelled the gift deed and executed another gift deed in favour of the 2nd appellant/defendant. The learned counsel for the respondent brought to the notice of this Court that the

respondent being not happy with the above referred order filed a Civil Revision Petition under Article 227 of Constitution of India and challenged the order, dated 12.01.2015 before this Court and the said C.R.P. was allowed by setting aside the impugned order.

12. The learned counsel for the respondent has submitted that the above referred "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" came into force in the erstwhile State of Andhra Pradesh w.e.f 28.04.2008. Therefore, the Tribunal which passed an order on 12.01.2015 has no jurisdiction to entertain the petition filed by the 1st appellant. Therefore, the appellants herein cannot claim any right over the property. The respondent/plaintiff is confident of getting orders in his favour in the main suit. Therefore, the respondent has got *prima facie* case and balance of convenience also is in his favour. If the appellants herein are not restrained from alienating the property and from changing the nature of the property, definitely there is possibility of they disposing

the property and such even definitely it will result irreparable loss to the respondent which cannot be compensated in terms of money.

13. It is a fact that the above referred Act was adopted by the erstwhile State of Andhra Pradesh vide G.O.Ms.No.10 dated 22.04.2008 and the Act came into force w.e.f 28.04.2008. There is no provision in the Act which will enable the appellants herein to claim that it came into force with retrospective effect. Even as per the affidavit filed by 1st appellant, the cancellation of gift deed in favour of respondent herein was without any prior notice to him and only on the basis of order/directions of Maintenance Tribunal-cum-Revenue Divisional Officer, Secunderabad Division in the above referred proceedings. Therefore, unless the 1st appellant is able to establish that she has got a right to cancel the gift deed executed in favour of respondent and she has conveyed the property in favour of the 2nd appellant, they cannot claim any right on the property. It may be true that the appellants are claiming

possession over the property, but in view of the above stated circumstances, if the respondent is able to prove that 1st appellant is not entitled to cancel the gift deed and such cancellation is against the procedure, definitely the document executed by the 1st appellant in favor of the 2nd appellant cannot convey any title. Therefore, the trial Court having considered all the above aspects rightly came to a conclusion that the respondent has got *prima facie* case and balance of convenience is in his favour, but not in favour of the appellants. In the light of the above stated circumstances, if the appellants are not restrained from changing the nature of the property, and alienating the same, and if they are allowed to transfer the property on the basis of subsequent gift deed, definitely it would cause irreparable loss to the respondent and lead to multiple proceedings.

14. The appellants have claimed title on the property by virtue of the proceedings of the Revenue Divisional Officer. However, as per the above referred Act, Section 23 confers

jurisdiction on the Tribunal to intervene in the dispute with regard to the property of a senior citizen. The provisions of the Act, clearly shows that where transfer of any property by way of gift or otherwise was made by a senior citizen, in such condition, transferee shall provide the basic amenities and basic physical needs to such senior citizen and if the transferee refuses or fails to provide the same, then the Tribunal can exercise jurisdiction to declare such transfer is void at the option of the senior citizen and the same shall be deemed to have been made by fraud, coercion or under undue influence. Therefore, Section 23 of the Act, deals with the property which are made by the senior citizens after the commencement of the Act. But, in the case on hand, the registered gift deed in favour of the respondent was executed by the 1st appellant on 24.01.2008. The Act came into force w.e.f. 28.04.2008. Therefore, the proceedings of the Tribunal based by the appellants herein cannot decide the right of the appellants over the property. Even as per the document namely

registered gift deed, dated 24.01.2008 it was executed by the 1st appellant out of love and affection and in view of the services rendered by the respondent/plaintiff. It was not executed with a condition that he shall render such services to the 1st appellant/mother. Therefore, the appellants herein cannot claim any right on the property by virtue of the subsequent document. Therefore, the trial Court rightly allowed the interlocutory applications filed by the respondent/plaintiff, as such both the appeals filed by the appellants are liable to be dismissed.

15. **In the result**, both the Civil Miscellaneous Appeals are dismissed.

As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,
1. The XVI Additional District & Sessions Judge, at Malkajgiri.
2. One CC to Sri Akkam Eshwar, Advocate (OPUC)
3. One CC to Sri K.Sarva Bhouma Rao , Advocate (OPUC)
4. Two CD Copies

ks

HIGH COURT

SSRN,J

DATED:24/04/2023

COMMON JUDGMENT

CMA.No.337 AND 338 of 2022

Dismissing the C.M.As
Without costs.